

Case No.

Resolution No.

Adopted:

Council(wo)man  
adoption:

offered the following resolution and moved its

**RESOLUTION ADOPTING THE FINDINGS STATEMENT, DATED JANUARY 21, 2020, IN ACCORDANCE WITH 6 NYCRR §617.11 AND THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) FOR THE CREATION OF A NEW ARTICLE XLII OF THE BUILDING ZONE ORDINANCE OF THE TOWN OF HEMPSTEAD, TO BE ENTITLED “BALDWIN MIXED-USE ZONING OVERLAY DISTRICT,” AND ADOPTING SUCH NEW ARTICLE INTO THE TOWN OF HEMPSTEAD BUILDING ZONE ORDINANCE**

**WHEREAS**, in August 2018, the Town Board accepted the Baldwin Downtown and Commercial Corridor Resiliency (DCCR) Study, which was the culmination of a comprehensive planning effort that reviewed existing economic and physical conditions along the corridor and outlined a series of strategies and projects that would address critical issues and contribute to a more resilient, safe, and sustainable future for the Baldwin community; and

**WHEREAS**, a key recommendation of the DCCR Study was the creation of a new overlay district along the corridor that would encourage the development of a walkable, compact and transit-oriented downtown with a mix of residential, retail and commercial uses supported by enhanced infrastructure; and

**WHEREAS**, the subject property is situated in Baldwin in the unincorporated area of the Town of Hempstead, and is made up of approximately 87 acres along the Grand Avenue corridor consisting of 189 individual tax lots, with approximate boundaries of the corridor being Florence Street and Milburn Avenue to the north, and Merrick Road between Gale Avenue and Park Avenue to the south; and between Chestnut Street/Rockwood Avenue to the west, and Milburn Avenue to the east, and includes the Baldwin Long Island Railroad (LIRR) station at Grand Avenue and Sunrise Highway; and

**WHEREAS**, The Town Board is considering, in consultation with VHB Engineering, Surveying, Landscape Architecture and Geology, P.C. (“VHB”) and Vision Long Island, a Baldwin Mixed-Use Overlay District (“the Proposed Action”), with accompanying Design Guidelines, for the Grand Avenue corridor in the hamlet of Baldwin to facilitate private investment and economic development by leveraging the area’s proximity to public transportation and promoting mixed-use transit-oriented development around the Baldwin LIRR station; and

**WHEREAS**, the Town Board in consultation with VHB and Vision Long Island, has developed a draft zoning ordinance known as the Baldwin Mixed-Use Overlay District (“B-MX”), with accompanying Design Guidelines, to facilitate high-quality and economically viable development within the Grand Avenue corridor of the hamlet of Baldwin; and

**WHEREAS**, pursuant to NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA), the Town Board has conducted a comprehensive environmental review of this project; and

**WHEREAS**, the Town Board has determined that the Proposed Action is a Type I Action in accordance with SEQRA; and

**WHEREAS**, pursuant to 6 NYCRR §617.6(b)(2)(i), for Type I actions involving more than one agency, a lead agency must be established prior to a determination of significance; and

**WHEREAS**, 6 NYCRR §617.6(b)(3)(i) requires that when an agency proposes to approve a Type I action undergoing coordinated review with other agencies, it must, as soon as possible, transmit Part 1 of the Environmental Assessment Form (EAF) completed by the project sponsor and a copy of any applications it has received to all involved agencies and notify them that a lead agency must be agreed upon within 30 calendar days of the date the EAF was transmitted to them; and

**WHEREAS**, the Town Board declared its intent to be lead agency on March 8, 2019 and followed the above mentioned procedure, receiving no objection from the other involved agencies during the ensuing 30-day period; and

**WHEREAS**, the Town Board caused to be prepared Parts 1, 2, and 3 of a Full Environmental Assessment Form of the EAF (collectively “the EAF”) to analyze and evaluate potential significant adverse environmental impacts associated with the Proposed Action, as described above; and

**WHEREAS**, the Town Board has compared the potential impacts of the Proposed Action, as set forth in Parts 2 and 3 of the EAF, with the criteria set forth in 6 NYCRR §617.7(c); and

**WHEREAS**, the Town Board found that the Proposed Action may have one or more significant adverse impacts on the environment and issued a Positive Declaration on April 16, 2019, requiring the preparation of a Draft Environmental Impact Statement (DEIS); and

**WHEREAS**, the Town Board determined that formal scoping would be conducted; and

**WHEREAS**, the Town Board caused a Draft Scope to be prepared in accordance with 6 NYCRR §617.8(b) and which Draft Scope was issued on April 16, 2019; and

**WHEREAS**, the Town Board directed the Town Clerk to file, distribute and publish the Draft Scope along with the Positive Declaration, in accordance with the requirements of 6 NYCRR §617.12(b) and (c); and

**WHEREAS**, a public scoping meeting was held on May 6, 2019 at 7 p.m. at the Town of Hempstead Town Hall, and all persons there were present wishing to be heard on the Draft Scope were given the opportunity to do so; and

**WHEREAS**, the comment period on the Draft Scope ended on May 24, 2019 and the lead agency received comments from the public, as well as involved and interested agencies, in addition to the testimony entered at the public scoping meeting; and

**WHEREAS**, the lead agency caused a Final Scope, dated June 11, 2019, to be prepared in accordance with 6 NYCRR §617.8(e), the content of which gave due consideration to the comments received during the public review period for the Draft Scope; and

**WHEREAS**, based on the foregoing, the Town Board, as lead agency, adopted the Final Scope on June 11, 2019, published said Final Scope to the Town’s website, circulated the Final Scope to the involved agencies and interested parties in accordance with the requirements of 6 NYCRR §617.8(e), and published the Final Scope in accordance with §617.12(b) and (c); and

**WHEREAS**, VHB prepared and submitted a Draft Generic Environmental Impact Statement (DGEIS) for the Proposed Action in accordance with the Final Scope; and

**WHEREAS**, the Town Board is empowered to amend the Building Zone Ordinance of the Town of Hempstead pursuant to Article 16 of the Town Law of the State of New York and Article XXVI of the Building Zone Ordinance of the Town of Hempstead, as amended; and

**WHEREAS**, it is in the public interest to consider the adoption of a new Chapter XLII of the Building Zone Ordinance of the Town of Hempstead, to be entitled “Baldwin Mixed-Use Overlay District (B-MX)”;

**WHEREAS**, in accordance with 6 NYCRR §617.3(h), agencies are encouraged to have combined or consolidated proceedings/hearings;

**WHEREAS**, pursuant to 6 NYCRR §617.9(a)(2), the Town Board of the Town of Hempstead determined that the DGEIS was complete and adequate for public review and comment in terms of both its scope and content by resolution adopted on August 6, 2019;

**WHEREAS**, the Town Clerk of the Town of Hempstead duly filed a Notice of Completion in accordance with 6 NYCRR §617.12 indicating that the Town Board had accepted the DGEIS and circulated the Notice of Completion with the DGEIS to involved agencies and interested parties in accordance with 6 NYCRR §617.12 and published the Notice of Completion on the Town’s website;

**WHEREAS**, the Notice of Completion and Notice of Public Hearing on the DGEIS and proposed amendments to the Town Building Zone Ordinance were published in a newspaper of general circulation in the Town of Hempstead more than 14 days prior to the public hearing and published said Notices to the Town of Hempstead website;

**WHEREAS**, the Town Board determined that it was in the public interest to hold a public hearing on the DGEIS pursuant to 6 NYCRR §617.9(a)(4) to aid the Board in its decision-making process by providing an efficient mechanism for the collection of public comments, broaden public disclosure, and solicit important and informative comments by constituents and stakeholders;

**WHEREAS**, pursuant to Resolution No. \_\_\_\_\_, adopted \_\_\_\_\_, 20\_\_\_\_, a public hearing was duly called, noticed for on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the Town Meeting Pavilion, Hempstead Town Hall, 1 Washington Street, Hempstead, New York, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day, to consider the creation of a new Chapter XLII of the Building Zone Ordinance of the Town of Hempstead, to be entitled “Baldwin Mixed-Use Zoning Overlay District; and

**WHEREAS**, in addition to the Public Hearing regarding the consideration of a new Chapter XLII of the Building Zone Ordinance of the Town of Hempstead, the Town Board scheduled a Public Hearing regarding the DGEIS for the proposed zoning amendments;

**WHEREAS**, pursuant to 6 NYCRR §617.3(h) the Public Hearings for the creation of a new Chapter XLII of the Building Zone Ordinance of the Town of Hempstead and the DGEIS for the Proposed Action, were conducted on September 3, 2019, giving all interested parties an opportunity to provide comments on same;

**WHEREAS**, at the direction of the Town of Hempstead Town Board, VHB prepared and submitted the Final Generic Environmental Impact Statement (FGEIS) which was filed by the Town Board on December 10, 2019 and circulated for public consideration for a period of ten days along with the Notice of Completion pursuant to the provisions of SEQRA and 6 NYCRR §617.9;

**WHEREAS**, the aforesaid public consideration period on the FGEIS has lapsed;

**WHEREAS**, no public comments were received regarding the FGEIS;

**WHEREAS**, pursuant to the direction of the Hempstead Town Board, VHB prepared a Findings Statement in accordance with 6 NYCRR §617.11 and submitted same to the Town Board for its consideration;

**WHEREAS**, the Town Board has reviewed the proposed Findings Statement and has given due consideration to the Proposed Action and the applicable statutory standards for reviewing and adopting the Findings Statement; and

**WHEREAS**, the Nassau County Planning Commission reviewed the Proposed Action pursuant to Section 239-m of the General Municipal Law, and by resolution adopted on January 9, 2020, recommended that the matter be left for local determination.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that pursuant to 6 NYCRR §617.11 of the implementing regulations of SEQRA, the Town Board, based upon its review and due consideration of all foregoing matters, hereby adopts the Findings Statement (attached) and directs that a copy of said Findings Statement shall be circulated to all involved agencies and interested parties, and be it further

**RESOLVED**, that after due deliberation, this Town Board finds that it is in the public interest to amend the Building Zone Ordinance of the Town of Hempstead, as aforesaid, and hereby adopts a new Article XLII of the Building Zone Ordinance of the Town of Hempstead, to be entitled “Baldwin Mixed-Use Zoning Overlay District (B-MX)” and that it shall state as follows:

**Article XLII. Baldwin Mixed-Use Zoning Overlay District (B-MX)**

**§ 422. Statement of intent and purpose.**

**A. Background.**

- (1) Downtown Baldwin, centered along Grand Avenue and the Baldwin LIRR station, is the commercial backbone of the Baldwin community. However, the economic health and resiliency of this commercial corridor has been affected by its lack of private sector investment, discontinuity of uses, and history of vacancies. Development patterns along this corridor have been varied and inconsistent.
- (2) The Baldwin community has long recognized the importance of the Grand Avenue corridor. The community envisions a downtown that is vibrant and pedestrian-friendly, with an active, compact, multi-modal LIRR station area at the center of the hamlet. This vision also incorporates a mix of land uses and innovative green infrastructure components to create a place where residents, commuters and visitors can shop, dine, and recreate.
- (3) In May 2017, the Baldwin Downtown and Commercial Corridor Resiliency (DCCR) Study was published. This report was the culmination of a comprehensive planning effort that reviewed existing economic and physical conditions along the corridor and outlined a series of strategies and projects that would address critical issues and contribute to a more resilient, safe, and sustainable future for the Baldwin community. A key recommendation of the DCCR Study is the creation of a new overlay district along the corridor that would encourage the development of a walkable, compact and transit-oriented downtown with a mix of residential, retail and commercial uses supported by enhanced transportation and infrastructure improvements.

**B. Purpose and legislative intent.**

- (1) In response to the needs of the Baldwin community, and following the recommendations put forth in the DCCR Study, the Town of Hempstead hereby enacts a new Article of the Town of Hempstead Building Zone Ordinance, which will create a new overlay district to be known as the “Baldwin Mixed-Use Overlay District (B-MX).”
- (2) The primary goal of the B-MX District is to facilitate private investment, public benefits and economic development within downtown Baldwin. The new overlay district seeks to leverage the area’s proximity to public transportation by promoting mixed-use transit-oriented development around the Baldwin LIRR station to meet increasing demands for housing and retail uses, drive foot traffic, implement transportation and infrastructure improvements necessary to accommodate future growth and enhance the visual quality and pedestrian amenities through the implementation of design guidelines, which are contained as an appendix to the Building Zone Ordinance (see “Baldwin Mixed-Use Zoning Overlay District (B-MX) Design Guidelines”).
- (3) The B-MX District regulations, as an overlay district, have been designed to minimize the creation of non-conformities with underlying zoning.

- (4) With the stated goals in view, this article is enacted with the intention of promoting the health, safety and general welfare of the Town of Hempstead and its residents.

**§ 423. Title.**

This article shall be known and cited as the "Baldwin Mixed-Use Overlay District (B-MX) Article" of the Town of Hempstead.

**§ 424. Definitions.**

In addition to the definitions of this Building Zone Ordinance, the following definitions are applicable to this article. In the event of conflict, the following definition shall be controlling:

**Assisted Living**

An establishment for the long-term residential care of the aged and infirm, such as congregate-care and assisted living facilities, but not including nursing homes, convalescent homes or substance abuse treatment centers.

**Incentive Bonuses**

Adjustments to the floor area ratios and parking requirements of the provisions of the Town of Hempstead zoning and land use laws for a specific purpose, that is beneficial to the community, when authorized by the Town Board.

**Incentive Zoning**

The system by which specific incentives or bonuses are granted to applicants pursuant to this subsection on condition that specific physical, social, or cultural benefits or amenities would inure to the benefit of the community.

**Mixed-Use Building**

A building with more than one type of land use (e.g. residential and commercial).

**§ 425. General Provisions.**

- A. Interpretation; conflicts with other provisions.
  - (1) In interpreting and applying the provisions of this article, the rules of interpretation applicable to remedial legislation shall be used so that the spirit and intent of this article shall be observed.
  - (2) In the event of a conflict between the provisions of this article and other provisions of this Building Zone Ordinance, the provisions of this article shall control.
- B. Severability. If any clause, sentence, section, paragraph or provisions of this article shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this article but shall be confined in its operation to the clause, sentence, section, paragraph or provision directly involved in the controversy in which such judgment shall have been rendered.

**§ 426. Applicability; Design Review; Subdistricts.**

In the B-MX District, the following regulations shall apply:

- A. The area within Baldwin designated B-MX is largely developed. As a result, the B-MX District has been designed as an overlay district, with the zoning regulations and Design Guidelines described herein, applicable to new development, redevelopment, and building expansions which result in a 10% or greater increase in the building's floor area. For existing uses and rehabilitations and expansions less than 10% of the gross floor area, existing zoning regulations shall still apply, and the Design Guidelines shall not apply.
- B. Design Guidelines have been established for the B-MX Overlay District in order to create a high-quality, pedestrian friendly environment. The principles described in the Baldwin Mixed-Use Design Guidelines are not mandatory development standards. However, all projects shall incorporate and demonstrate how these design principles meet the purpose and intent of the guidelines. In reviewing applications, the Design Review Board, which is hereby established, shall follow the criteria of the Baldwin Mixed-Use Design Guidelines and B-MX Overlay District Design Guidelines Checklist contained as an appendix to the Building Zone Ordinance.<sup>[1]</sup> The ultimate approval of projects will be judged in accordance with these design guidelines.  
*<sup>[1]</sup> Editor's Note: Said guidelines are an appendix to the BZO.*
- C. For purposes of this article, the B-MX District shall be divided into three subdistricts as indicated on the Zoning Map described in § 431 of this article. These subdistricts include:
  - (1) Baldwin – Mixed-Use, Transit-Oriented Development (B-MX, TOD).
  - (2) Baldwin – Mixed-Use, Merrick Road Gateway (B-MX, MRG).
  - (3) Baldwin – Mixed-Use, Commercial Transition (B-MX, CT).

**§ 427. Permitted uses.**

- A. In the B-MX Zoning District, the following uses shall be permitted uses:
  - (1) Professional office, bank or financial institution
  - (2) Pharmacy/drugstore
  - (3) Retail trade and personal services, including supermarkets
  - (4) Restaurants, including outdoor dining as an accessory thereto, but excluding lunch wagons, drive-in restaurants, drive-in luncheonettes, drive-thrus, drive-in counter or drive-in refreshment stands.
  - (5) Health and fitness establishments
  - (6) Multiple-family dwelling
  - (7) Assisted living
  - (8) Mixed-use, as defined in this article
  - (9) Parking field, either public or private, for the parking of passenger vehicles only, but not for display or sale of automobiles.
- B. Special permit uses. The following special uses, when approved by the Town Board, are permitted:
  - (1) Hotels.
  - (2) Dormitory/Graduate Student style housing.
  - (3) Cabarets.
  - (4) Bowling alleys, skating rinks, and arcades.
- C. Accessory uses. The following uses customarily incidental to permitted, and special permit uses if approved, shall be permitted in the B-MX Overlay District:
  - (1) Off-street parking and loading, including parking structures.
  - (2) Open space or plaza areas.
- D. Religious and educational uses shall be governed by Article XXXIX of this Ordinance.

**§ 428. Prohibited uses.**

- A. In the B-MX Zoning District, the following uses shall be prohibited:
  - (1) Any use prohibited by Article XXXVII of this Ordinance.
  - (2) Car wash
  - (3) Check-cashing establishment
  - (4) Drive-in theater
  - (5) Dry cleaning or laundromat services done on-site (drop-off/pick-up permitted).
  - (6) Gambling or games of chance establishment
  - (7) Gasoline station, motor vehicles repair or auto body shop
  - (8) Kennel or pet-boarding facility
  - (9) Motel

- (10) New or used automotive showroom or car lot
- (11) Outdoor storage use
- (12) Pawnshop, including auction house
- (13) Tattoo Parlors
- (14) Residential dwelling units on the ground floor of any building.
- (15) Any use not permitted in section §427 Permitted Uses.

**§ 429. Lot and bulk controls.**

A. Consistent with primary goals of the B-MX District, the following lot and bulk controls allow for greater intensities of development for properties fronting Grand Avenue and Sunrise Highway closest to the Baldwin LIRR station (B-MX, TOD). The lot and bulk controls for the B-MX, MRG subdistrict facilitate private investment, public benefits and economic development within the area around the intersection of Merrick Road and Grand Avenue. The B-MX, CT subdistrict facilitates appropriately scaled mixed-use commercial development in transition areas along the Grand Avenue corridor.

	<b>B-MX, TOD</b>	<b>B-MX, MRG</b>	<b>B-MX, CT</b>
1. Maximum floor area ratio (FAR) <sup>(1)</sup>	1.5	1.0	.5
2. Maximum building area coverage	90% for commercial buildings 80% for mixed-use or multiple-family buildings	90% for commercial buildings 60% for mixed-use or multiple-family buildings	75% for commercial buildings 40% for mixed-use or multiple-family buildings
3. Maximum residential density for multifamily and mixed-use buildings	N/A <sup>(2)</sup>	N/A <sup>(2)</sup>	N/A <sup>(2)</sup>
4. Maximum building height	75 feet	60 feet	45 feet
5. Maximum building setback from front lot line (build to line), except for pedestrian plaza areas	0 feet	0 feet	10 feet
6. Minimum building setback from 45 feet height and above	5 feet from streetside, ground level building line.	5 feet from streetside, ground level building line.	5 feet from streetside, ground level building line.
7. Minimum side yards	None required	None required	None required
8. Minimum rear yard	0 <sup>(3)</sup>	0 <sup>(3)</sup>	0 <sup>(3)</sup>
9. Minimum landscaped buffer area when adjacent to residential uses	10 feet <sup>(4)</sup>	10 feet <sup>(4)</sup>	10 feet <sup>(4)</sup>
10. Minimum front yard	Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.	Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.	Minimum 10 feet from the curb; Maximum 10 feet from the property boundary.

<sup>(1)</sup> For purposes of this Article, the floor area ratio (FAR) shall exclude any structure, or portion of a structure, exclusively dedicated for off-street parking.

<sup>(2)</sup> To be determined by the Town Board upon review of any application that it must review and approve in accordance with the provisions of this Article.

<sup>(3)</sup> The depth of the rear yard shall be increased five feet for each 12 feet or portion thereof by which the building exceeds forty (40) feet in height.

<sup>(4)</sup> The depth of the landscaped buffer area shall be increased five feet for each 12 feet or portion thereof by which the building exceeds forty (40) feet in height.

B. Yard setbacks.

- (1) Front yards. Notwithstanding the foregoing, a roof, mansard, awning, or similar projection not exceeding 24 inches beyond the front property line shall be a permitted encroachment.
- C. Screening. Any storage area or parking area shall be screened from all abutting uses, including public rights-of-way. Such screening shall consist of a hedge, fence or wall, with a minimum height of four feet and a maximum height of six feet, except that within a radius of 20 feet of the point formed by any intersecting property lines adjacent to roads or highways, the maximum height shall be 30 inches, such screening to be sufficient to obscure such area in an effective manner and during all seasons of the year.
- D. Fences. No fence or wall more than six feet in height may be erected without a permit and authorization by the Board of Appeals pursuant to Article XXVII hereof. No fence shall be permitted in the front yard or the side yard if located on a corner lot.
- E. Signs. Signs, which are authorized under the provisions of Article XXIV, are permitted, subject to consistency with the Baldwin Mixed-Use Design Guidelines.

**§ 430. Off-street parking.**

Accessory parking. Accessory off-street automobile parking spaces shall be provided on the same lot or premises or off the premises within 300 feet of such premises. The minimum number of accessory parking spaces required shall be determined by the type of each included use and shall be calculated as follows.

Use	B-MX, TOD	B-MX, MRG and B-MX, CT
Retail/Commercial	1 space per 300 square feet	1 space per 300 square feet
Multifamily Apartment: Studios	1 space per unit	1 space per unit
Multifamily Apartments: One-bedroom units	1 space per unit	1.3 space per unit
Multifamily Apartments: Two-bedroom units	1.5 spaces per unit	1.75 spaces per unit
Multifamily Apartments: Three or more bedroom units	1.75 spaces per unit	2 spaces per unit
Assisted Living	1 space per bed	1 space per bed
Graduate student housing	1 space per bed	1 space per bed
Other permitted uses	In compliance with §319 of this ordinance; each parking space shall comply with all requirements of §319D of this ordinance	

**§ 431. Amendment of the Zoning Map**

In furtherance of the implementation of this article, and to specifically identify the particular areas within Baldwin placed into the overlay B-MX District and three subdistricts established herein, a particular zoning map dated January 21, 2020, prepared by VHB Engineering, Surveying, Landscape Architecture and Geology, P.C., and entitled "Baldwin – Mixed-Use Rezoning Map," has been filed in the office of the Town Clerk, and in all other places required by law or otherwise for the filing of zoning maps of the Town. This map is incorporated herein by reference. It identifies the areas in the overlay B-MX District and subdistricts, and upon the effective date of this Article, it shall apply in those areas to the extent provided in this article or otherwise at law.

**§ 431.1 Development bonus provisions.**

- A. Intent. The Town Board, including but not limited to a recommendation by the Design Review Board, is empowered to provide for a system of zoning incentives, as described, but not limited to, below, as it deems necessary and appropriate for the benefit of the community, consistent with the purposes and conditions set forth in this Article.
- B. Eligible Community Benefits or Amenities.
  - (1) Provision, Renovation or Rehabilitation of a community benefit or amenity. Open space, parks, or other specific physical, social or cultural amenities, or cash or payment in lieu

thereof, as authorized by the Town Board, which provide a benefit to the residents of the community.

- (2) Brownfield or Derelict Property Remediation and Restoration. Applicants may apply for a development bonus in exchange for providing Brownfield or derelict property remediation and restoration on lots proposed for development within the B-MX Overlay district, to prepare the property(ies) for either dedication for public use for redevelopment by a public or private owner. The Building Department shall provide a list of preferred properties for rehabilitation or restoration.
  - (3) Contribution to Community Benefit Non-Site Related Infrastructure Improvements. Non-site related improvements are considered significant improvements that are not directly needed, required or related to the subject site development or mitigation of impacts therefrom, but will be able to be utilized by the proposed project's residents or will indirectly improve the project or its site. Infrastructure improvements may include, but are not limited to, significant provisions, renovations, creation, installation and/or rehabilitation of public solid waste and recycling receptacles, traffic calming measures, bicycle accommodations, public seating, wider than required sidewalks, specialty pavers or utility covers as part of district "branding", repaving of a street(s), intersection upgrades (including street lights and crosswalks), public plazas, bus shelters and/or LIRR Baldwin station area enhancements, storm or sanitary sewer improvements, or cash or payment in-lieu thereof. The Design Review Board and/or the Town Building Department may provide recommendations to the Town Board.
- C. FAR Development Bonus. This provision allows for the awarding of zoning incentives in the form of floor area ratio (FAR) development bonuses of up to 0.5 in each of the B-MX subdistricts to those applicants who, in exchange, provide one or more of the following (but not limited to): to eligible community benefits or amenities outlined in §431.1B, parking for the public (not including that parking specifically required to support the proposed development), community amenities or development actions above and beyond those that are directly or indirectly necessitated by the project itself, or cash or payment in lieu of, provided that the Town Board finds that the amenity is proportional to such development bonus. Applicants would be required to prepare a Traffic Study in accordance with the Conditions and Criteria set forth in the Findings Statement adopted by the Town Board in order to seek FAR development incentives.
- D. Adjustments to Parking Requirements. This provision allows for the awarding of zoning incentives in the form of adjustments to parking requirements. The Town Board is empowered to provide the following adjustments to the parking requirements within the B-MX District to those applicants who, in exchange, provide one or more of the following (but not limited to): to eligible community benefits or amenities outlined in §431.1B, parking for the public (not including that parking specifically required to support the proposed development), community amenities or development actions above and beyond those that are directly or indirectly necessitated by the project itself, or cash or payment in lieu of, provided that the Town Board finds that the amenity is proportional to such development bonus. Applicants seeking off-street parking requirement incentives would be required to prepare a Parking Study in accordance with the Conditions and Criteria set forth in the Findings Statement adopted by the Town Board.

Use	B-MX-TOD	B-MX-MRG and B-MX-CT
Retail/Commercial	1 Space per 340 SF	1 Space per 340 SF
Multifamily Apartment: Studios	0.70 Spaces Per Unit	0.80 Spaces Per Unit
Multifamily Apartment: 1-bedroom units	0.70 Spaces Per Unit	0.80 Spaces Per Unit
Multifamily Apartment: 2-bedroom units	1.25 Spaces Per Unit	1.5 Spaces Per Unit
Multifamily Apartment: 3-bedroom units	1.75 Spaces Per Unit	2 Spaces Per Unit
Assisted Living	0.5 Spaces Per Bed	0.5 Spaces Per Bed
Graduate Student Housing	0.70 Spaces Per Bed	0.70 Spaces Per Bed
All other permitted uses	Shall comply with the parking requirements outlined in §319D of the Town's zoning code.	

- E. Criteria for approval, methods required for determining the adequacy of community amenities. To evaluate the adequacy of the proposed benefits to be accepted in exchange for the

requested incentives, the following information shall be provided by the applicant with its application for development incentive bonus approval:

- (1) A description of the proposed amenities outlining the benefits that will accrue to the community;
- (2) The economic value of the proposed amenities to the Town as compared with the economic value of the proposed incentives to the applicant;
- (3) Demonstration that there are adequate sewer, water, energy, transportation and parking, fire-protection facilities serving or proximate to the proposed development to handle the additional demands the incentive and amenity may place on such facilities beyond the demand that would otherwise occur with as-of-right development; and
- (4) An explanation as to the way in which the amenity will implement physical, social or cultural goals as set forth in this Article.

#### **§ 431.2. Administration and Procedure.**

The review and approval process for new development, redevelopment, and building expansions which result in a ten percent or greater increase in the building's floor area in the B-MX District, shall be as follows:

- A. A building permit application shall be submitted to the Buildings Department. In addition to all otherwise required documentation, an applicant shall also submit all materials necessary for review by the Design Review Board, including a consistency analysis with the SEQRA Conditions and Criteria set forth in the Findings Statement adopted by the Town Board. The Design Review Board will determine the level of State Environmental Quality Review Act ("SEQRA") review required, if any, in accordance with 6 NYCRR §617.10(d). The Plans Examiner shall, upon the submission of a complete application, conduct a zoning compliance review and review for compliance with SEQRA.
- B. The Design Review Board. Upon complete review of zoning and SEQRA compliance, the application shall be referred to the Design Review Board for purposes of applying the Baldwin Mixed Use Zoning Overlay District (B-MX) Design Guidelines.
  - (1) The Design Review Board shall consist of three employees of the Department of Buildings with site plan review backgrounds, appointed by the Town Board. Approval by the Design Review Board shall be necessary prior to the issuance of a sign permit or a building permit for new development, redevelopment, and building expansions which result in a ten-percent or greater increase in the building's floor area.
  - (2) Prior to the Public Hearing of the Design Review Board, a public notice, prepared by the Design Review Board, shall be published at least 10 days prior to the date fixed for such public hearing in a newspaper of general circulation in the Town of Hempstead and shall be noticed on the Town's website at least 10 days prior to the public hearing. The notice shall state the general nature of the application, the applicant, and the location of the property. Said notice shall be mailed by the applicant no more than 28 days and no less than 21 days prior to the Design Review Board's hearing by certified mail to all property owners within a 300 foot radius of the subject application's property boundaries, and the applicant shall file an affidavit of mailing, with the certified mail receipts, with the Design Review Board prior to the public hearing .
  - (3) A sign noticing said public hearing shall be posted at said location at least 21 days prior to the date fixed for such public hearing. Said sign(s) shall be located in each front yard setback of the subject premises; shall be at least 24 square feet in area; shall provide the words "NOTICE OF PUBLIC HEARING" and the date, place and time of the public hearing, and the general nature of the application in black letters at least six inches high with a background color of the face of the sign either bright orange or bright yellow.
  - (4) In reviewing applications, the Design Review Board shall substantially follow the criteria of the Baldwin Mixed Use Zoning Overlay District (B-MX) Design Guidelines and B-MX Overlay District Design Guidelines Checklist contained as an appendix to

the Building Zone Ordinance. The ultimate approval of projects will be judged in accordance with these design guidelines.

- (5) If the application is compliant with zoning and in accordance with 6 NYCRR §617.10(d)(1), as determined by the Design Review Board, no further SEQRA review is required. If the application is not compliant, based on 6 NYCRR §617.10(d) (2) – (4), additional SEQRA will be required.
  - (6) The Design Review Board shall have the powers granted by the Town Law and the power to approve, disapprove, or grant with conditions applications for Design Review Board approval for properties within the B-MX District. The Design Review Board shall render a written determination within 30 days of the completion of the public hearing, and may issue findings of fact.
  - (7) If the Design Review Board does not vote for changes to the plan, or votes for changes to the plan and the applicant consents to the changes, and the project is compliant with zoning and SEQRA, then the application can be circulated to State, County, and Town departments for approvals. Once all State, County, and Town approvals are obtained, the Building Department will issue a Building Permit. Site plan approval under § 305 will not be required. The project will not require a Town Board hearing.
  - (8) The Town Board, including but not limited to the Design Review Board’s recommendation, following a public hearing, may provide incentive bonuses in exchange for the applicant providing one or more community benefits or amenities or cash or payment in lieu thereof, as authorized by the Town Board and in accordance with § 431.1B of this Article.
  - (9) Anyone aggrieved by the decision of the Design Review Board may appeal same to the Board of Appeals, unless the underlying application must be reviewed or approved by the Town Board, in which case an appeal shall be within the jurisdiction of the Town Board.
- C. If an application is not zoning compliant, or if additional SEQRA review is required under Section B(5), above, upon completion of review and decision by the Design Review Board, the application shall be referred to the Town Board for a public hearing to determine the approval or disapproval of the application. In the event that the Town Board approves said application, it may attach certain conditions to said approval, which conditions shall become an integral part thereof. The Town Board may, by resolution, dispense in part with conformity with the provisions applicable to the B-MX District and may impose safeguards and conditions as it may deem appropriate, necessary or desirable to promote the spirit and objectives of this section, including but not limited to restrictive covenants pertaining to any area within the district that is the subject of an application, including the site plan submitted on behalf of the application, together with other agreements, if any, in recordable form and running with the land. If the Town Board approves an application, the application shall then be circulated to State, County, and Town departments for approvals. Once all State, County, and Town approvals are obtained, the Building Department will issue a Building Permit. Site plan approval under § 305 will not be required. The project will not require a second Town Board hearing.

and, BE IT FURTHER

**RESOLVED**, that said Article shall take effect according to law, and that the Town Clerk shall enter said amendment in the Minutes of the Town Board and the Ordinance Book and shall publish a copy of this resolution once in a newspaper having a general circulation in the Town of Hempstead, and file in her office an affidavit of such publication.

The foregoing resolution was adopted upon roll call as follows:

AYES:

NOES: